

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8885 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

M K CHANDARANA KANYA VIDYALAYA SAMITI

Versus

BACHUBHAI H PORIA

Appearance:

MR ND NANAVATI for Petitioner

MR RK MISHRA for Respondent No. 1

None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/08/97

ORAL JUDGEMENT

1. The petitioner, a registered trust under the Bombay Public Trusts Act, filed this special civil application and challenge as been made to the order of the Gujarat Secondary Education Tribunal at Ahmedabad dated 7-8-1991 in Application No.818/89, filed by the respondent No.1, herein, under which the order of termination of the services of the respondent No.1 was

quashed and set aside and the order of reinstatement of the respondent No.1 without backwages was ordered.

2. The respondent No.1 was the employee of the petitioner-trust and was working as Junior Clerk. Then he was given the promotion on the post of Senior Clerk on 1-4-1982. He was served with a chargesheet for the misconduct committed by him and after holding an inquiry in which all the charges were found proved, the services of the respondent No.1 were brought to an end under the order dated 27th September, 1988. The action of the petitioner to terminate the services of the respondent No.1 was justified by the District Education Officer. That order has been challenged by the respondent No.1 by filing an application before the Tribunal and under the impugned order the said application came to be allowed. Hence, this special civil application before this Court.

3. The learned counsel for the petitioner contended that the respondent No.1 has committed a grave and serious misconduct and the charges were framed against him which were found proved. Thereafter, his services were terminated to which no exception should have been taken by the Tribunal. It has next been contended that the respondent No.1 has not contested the matter in the inquiry. It has next been contended that though the Tribunal has found as a fact that the respondent No.1 was not doing any work from 16th January, 1984, he has been given the salary, but still the interference has been made in the matter of termination of his services. Further finding has been recorded by the Tribunal that the allegations of malafide or malice are not proved, but still the Tribunal has taken it to be a case where interference should be made. Lastly, the counsel for the petitioner contended that even if there was some irregularity or illegality in the inquiry then the Tribunal should not have passed the order of reinstatement, but the matter should have been sent back to the Inquiry Officer to proceed from the stage where the defect in the inquiry has been found.

4. On the other hand, the counsel for the respondent No.1 contended that the Tribunal has taken a reasonable view in the matter, and as such, under Article 226 of the Constitution, this Court should not interfere. It has next been contended that it is not the case where the respondent No.1 has been given full relief. The Tribunal has not considered it to be a fit case to award the backwages to the respondent No.1, and as such, this Court should not interfere in the matter.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. However, in view of the fact that this writ petition deserves to be accepted only on the contention of the counsel for the petitioner that where the inquiry has been found to be defective, the Tribunal should not have ordered for reinstatement of respondent No.1 and the matter should have been sent back to the Inquiry Officer, I do not consider it necessary to advert to all other contentions raised by the counsel for the petitioner.

7. From the impugned order of the Tribunal, I find that it found the fault in the inquiry as the officer had not referred to the defence and replies of the respondent No.1 what to say to consider the same. The Tribunal has further held that even if the respondent No.1 has not participated in the inquiry, but still it was the duty of the Inquiry Officer to consider the defence as well as replies submitted by him. Other defects in the inquiry found in the present case are that before passing of the order of termination, the respondent No.1 has not been given an opportunity of hearing and the Inquiry Officer has not passed a reasoned order. The order of District Education Officer was also found to be a non-speaking order. Further error has been found that the evidence produced has not been discussed by the Inquiry Officer. So after finding all these errors or defects or illegalities in the inquiry as well as in the order of the District Education Officer, I fail to see any justification with the Tribunal to pass the order of reinstatement of respondent No.1 in the present case.

8. In such matters, the Tribunal should have passed an order for sending the matter back to the Inquiry Officer to proceed from the stage where the fault or illegality or error has been found by the Tribunal. Reference in this respect may have to the decision of the Hon'ble Supreme Court in the case of State of Punjab vs. Dr. Harbhajan Singh reported in JT 1996 (5) SC 403. The Hon'ble Supreme Court in the aforesaid case held that when the inquiry was found to be defective, it is not proper for the Court to order for reinstatement of the delinquent Officer. The matter has to be remitted to the disciplinary authority to follow the procedure from the stage at which the default was pointed out and take the action according to law. In that case, the Hon'ble Supreme Court further ordered that pending the inquiry the delinquent must be deemed to be under suspension. In this case, the fault has been found by the Tribunal in the inquiry proceedings at the stage of passing of the

final order by the Inquiry Officer. The Inquiry Officer has not considered the defence and replies of the respondent No.1 as well as it has not discussed the evidence. Further fault has been found that the Inquiry Officer has not recorded the reasons. So the matter should have been sent back to the Inquiry Officer to rewrite the inquiry report and the reinstatement in this case is not justified. Similarly, the order of sanction of termination of the services of the respondent No.1 by the District Education Officer was found to be defective then too the proper course would have been to direct the said authority to pass a speaking order in accordance with law. In such case also, the reinstatement should not be ordered.

9. In the result, this Special Civil Application succeeds and the order of the Tribunal dated 7-8-1991 passed in Application No.818/89 is quashed and set aside and the matter is sent back to the Inquiry Officer to pass a speaking order after considering the defence and replies of the respondent No.1 as well as after appreciating the evidence which is already produced on record. The counsel for the respondent No.1 submits that the respondent No.1 may be given an opportunity to participate in the inquiry by producing defence etc., but the Tribunal has not found any fault in the inquiry on this ground, and as such, this opportunity cannot be given. After receiving the inquiry report, the disciplinary authority shall pass a fresh order and then the matter may be sent to the District Education Officer where it decides to terminate the service to decide the question of grant of sanction to the action of termination of services of the respondent No.1. Till the matter is decided, in case the respondent No.1 is placed under suspension, he shall remain under suspension otherwise also he should be treated under suspension for this period. The Special Civil Application and Rule stand disposed of in the aforesaid terms with no order as to costs.

zgs/-